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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

No. 946.

JOHN WOODY et al.,
Petitioners,

vs.

STERLING ALUMINUM PRODUCTS, INC., etc., et al.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

BRIEF FOR RESPONDENT
Sterling Aluminum Products, Inc.,
IN OPPOSITION.

OPINION BELOW.

The opinion of the Court of Appeals for the Eighth Circuit in the case below is reported at 365 F. 2d 448, and also appears as Appendix A to Petitioners' Brief, pages 9-23.

The Opinion supporting the final judgment of the District Court in the case below is reported at 243 F. Supp. 755 (July 21, 1965)—R. 232, reprinted as an Appendix to this Brief. An earlier opinion by the District Court, supporting a dismissal of Count III on the merits and

of the other Counts with leave to amend (R. 117), was filed on January 21, 1965; it is printed in 244 (sic) F. Supp. 84, and appears at R. 100 ff.

JURISDICTION.

The Petitioners invoke the original jurisdiction of the United States District Court conferred by the Labor Managment Relations Act, § 301, Title 29, U. S. C. A., § 185; and the jurisdiction of the Supreme Court is invoked under the Act of June 25, 1948, c. 646 (1), 62 Stat. 928 (1), Title 28, U. S. C. A., § 1254.

QUESTIONS PRESENTED.

Did the Courts below err in holding that a group of employees (even though comprising all the members of a unit represented by a labor organization) have no right to bring and maintain an original suit *ex contractu* under § 301 (Title 29, U. S. C. A., § 185) to compel their employer, "to bargain and/or arbitrate" with them "as individuals" (R. 144) and without participation of their Union (Petition, p. 5), over an alleged "grievance" concerning the employer's announced intention that upon expiration of the contract it would close its St. Charles plant, terminate all employees at St. Charles, and relocate its operation elsewhere, where (a) the contract **expressly** provided that the employer could, upon such expiration, close, remove, and terminate without liability to such employees, (b) neither the employees nor the Union ever filed a grievance over such intention or action of the employer, (c) the plaintiffs, by delay and by bringing this suit, and the employer and the Union by moving to dismiss Count III on the merits, **waived** and **repudiated** arbitration thereon; and (d) the employees claim that the Union "abandoned" them, but make no showing of wrongdoing on the part of the employer?

STATEMENT OF THE CASE.

Out of the complex statements of "details, conclusions, and inconsistent averments" (District Judge Regan's Opinion, R. 238) of the original and various amended complaints filed in this case,[1] it appears that the Petitioners have selected (a) the claim that the individual former employees in the Machinists' Unit of the Respondent's St. Charles plant were "abandoned by their Union," and thereby became entitled, *as individuals,* in an original suit brought under § 301, to seek a Court order compelling the Respondent-employer "to bargain and/or arbitrate" directly with such employees, "by and through their duly elected chief steward and stewards," and not their Union, a claimed dispute over the Respondent's closing and removal of its St. Charles plant and the termination of the Petitioners' employment, all occurring *after* the expiration of the contract between the Union and the Respondent; and, (b) the claim that the United States Courts generally and the Supreme Court in particular should designate "a remedial forum" for the prosecution of "**a claim for damages against a Union** by its members for a breach of the Union's duty of fair representation" (Emphasis supplied).

With this substantial narrowing of the claims confusingly stated even in Petitioners' second amended complaint (R. 121), we shall undertake to state the case relevant thereto, although their broad charge of "abandonment" by the Union does not indicate just what rights of the Petitioners were abandoned by the Union

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[1] See other comments of the District Judge, R. 232-233, 238-239 (243 F. Supp. pages 759, 760, 761, 762) and comments of the Court of Appeals describing the case as one "made complex and annoyingly difficult because of the garbled and overlapping and contradictory allegations of the pleadings (365 F. 2d 448, 454).

and what would be the nature and basis of the claim they would make in the "remedial forum" they seek.[2]

Petitioners are former employees of the Respondent in the machinists' department of its St. Charles, Missouri plant. Each belonged to and was represented by District 9, International Association of Machinists (the "Union"), which was exclusive bargaining agent (R. 122-3). The Union (and its International) are respondents along with Sterling.

THE CONTRACT.

The labor agreement executed by the Union and Respondent (Sterling) in 1961 expired on February 28, 1963 (R. 128).

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[2] From Petitioners' Statement of Questions Presented, we conclude, correctly we trust, that Petitioners now claim, so far as the **employer** is concerned, as a basis for the "abandonment" charge, only the non-action by the Union with respect to the handling of the "grievance" over the closing and removal of the plant and the termination of the employees, and no longer make the numerous other claims made below, e. g. that the employer and the Union colluded in drawing up and executing the contract in 1961, and "grievances" that arose during the term of the contract. Of these other claims, the Court of Appeals said (365 F. 2d 448 at 455, footnote 8; Petition, p. 20):

> "It would unduly prolong this opinion to discuss all plaintiffs' various complaints. Some are specious on their face and subject to dismissal for failure to state a claim upon which relief can be granted. Examples are complaints with respect to matters predating the contract during the time of the strike and when no contract was in existence. Others failed to specify dates and could possibly have been during periods which would not give rise to a cause of action. Additionally, we have heretofore held that the Union alone has the right to negotiate broad policy issues such as re-negotiation of a new contract and relocating of a plant. The individuals have no vested interest in a company's operations being conducted at any certain location and Sterling had no duty to arbitrate this or any other issues that it had not agreed to arbitrate. See **Brown v. Sterling Aluminum Products, Inc.**, 365 F. 2d 651 (8th Cir. 1966)."

The contract in this case provided for recognition of the Union as the exclusive bargaining agent "for all employees in the Company's (Sterling's) **St. Charles** Plant" in certain described classifications comprising all the production workers other than those employed in the foundry (R. 32-33).[3]

The contract provided that:

> (j) The Union recognizes the right of the Company in its sole discretion at any time during the term of this agreement to close down permanently its plant at St. Charles or to discontinue permanently a department of the plant or a substantial portion thereof and terminate the employment of individuals (R. 45).

It further provided that:

> The employee whose employment is terminated either directly or indirectly as a result thereof because he was not entitled to other employment with the Company under the provisions of Article IV, Seniority, shall be entitled to a seniority termination allowance provided such termination for reasons set forth above occurred after March 1, 1961 (R. 45-6).

There followed in the contract a schedule for such termination allowance depending upon the employee's base rate of pay and years of service (R. 46), and a further provision that:

> *It is expressly understood at the expiration of this two year contract the company shall have the right to close down permanently the St. Charles plant, to relocate permanently any department thereof or discontinue permanently any such department, without seniority termination pay* (R. 46).

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[3] The foundry workers were represented by another union. See **Brown v. Sterling Aluminum Products, Inc.**, 365 F. 2d 651, 8th Circ. 1966, certiorari pending, No. 937 this Term.

The contract also sets up a conventional four-step grievance procedure, providing for arbitration as the fourth step (R. 39-41). The first required step is that the employee, shop steward and foreman attempt a settlement (R. 40).

No grievance was ever filed relating to the closing or removal of the plant or termination of the employees incident thereto (R. 230). Other grievances mentioned in the record were not carried ever as far as the first step, although plaintiff Woody had full authority to do so (Woody affidavit, R. 149).

NOTICE OF CLOSING.

By letter of December 26, 1962 Sterling duly notified the Union in writing that it would permanently cease all manufacturing at St. Charles at the close of business February 28, 1963 when the contract by its terms would expire (R. 89).

Also by letter of December 26, 1962 the Union notified Sterling of its desire to terminate the contract and its intention to submit proposed changes at an early date (R. 90-91), which it, in fact, did (R. 91 and 155-160).

In response to these communications, Sterling, on January 14, 1963, restated to the Union its intention to close permanently the St. Charles plant on February 28, 1963; that checks for the last week's work and for vacation pay would be distributed as soon as the amounts thereof could be computed; and that, since Sterling would not employ any production workers at St. Charles after February 28, 1963 and since the Union did not represent Sterling's employees at any other plant, no negotiation of any new contract would be undertaken; but Respondent in the same letter told the Union that:

> Nevertheless the Company is ready to continue meeting with the representatives of your organization

to discuss matters within the scope of the current contract which will terminate February 28, 1963 (R. 92-94).

THE PLANT CLOSING.

On February 27, 1963, Sterling notified the Union and each employee in person in writing that the St. Charles plant would close permanently at the end of the day February 28, 1963 and that each of the plaintiffs would be terminated as an employee at that time. This written notice to each plaintiff was accompanied by a check covering the employee's pay through February 24, 1963 and stated that the company was computing pay for February 25 to February 28, 1963, both days inclusive, "although you are not to return to work on February 28", and that a check for pay to the date of termination, plus vacation pay, would be mailed as soon as the amounts due could be computed which the Company said would not be later than March 5, 1963 (R. 94).

All the plaintiffs accepted payment for their employment through February 28, 1963 with their vacation pay, but they performed no productive work for Sterling on February 28, 1963 (R. 94, 100; Supp. R. 13).

The decision to stop production at the end of business on February 27, 1963, instead of waiting until February 28, 1963, was taken because of reports and other indications that on the final day there might be serious disorders and damage done to the Company's property, especially its sensitive precision equipment. To avoid such consequences the management determined that, without any advance notice, the employees would be denied access to the plant on the last working day, February 28, 1963, although they would be paid for a full day's work for that day and would not be terminated until midnight of February 28, 1963 (R. 95-100).

NO GRIEVANCE FILED ABOUT CLOSING OF PLANT.

Although plaintiffs seek to invoke the grievance procedure to "bargain and/or arbitrate . . . regarding the termination of their employment and the re-location of the manufacturing plant where they were employed". (Petition, pp. 2-3), the Court of Appeals found on the basis of the record that

> ". . . neither the plaintiffs nor the Union had attempted a discussion or filed any grievance with Sterling respecting the plant closure, its removal, termination of employees, despite Sterling's reiterating in writing on January 14, 1963 its plan to close, remove and terminate plaintiffs and its expression therein of its willingness to discuss any subject within the scope of the then current labor contract."
>
> 365 F. 2d 448 at 455; reprinted in Petition, p. 21.

DISTRICT COURT PROCEEDINGS.

The plaintiffs' original Complaint (Supp. R., pp. 1-19) was filed **September 13, 1963**, more than six months after the closing and moving of the St. Charles operation, the termination of all of the plaintiff employees, and their acceptance of their final pay including all vacation pay due them under the contract.

The First Amended Complaint was in four counts (R. 13-30). Sterling moved to dismiss all counts (R. 73 ff.). Sterling also filed a motion for summary judgment on Count III (R. 82 ff.), and the plaintiffs likewise filed a motion for summary judgment on Count III (R. 76). In January 1965, the District Court ruled in Sterling's favor on the Count III summary judgment motions, thus deciding Count III in Sterling's favor on the merits (R. 113, 117). At the same time it sustained the motion to dis-

miss Counts I, II, and IV, but granted leave to amend (R. 117) (244 F. Supp. 84).

Count III is a claim for money damages based on the proposition that, by closing its doors on February 27 rather than on February 28, 1963, Sterling became obligated to pay each employee the severance pay (R. 24-5). Plaintiffs' argument is that they were terminated **during** rather than at the expiration of the contract term, notwithstanding they were paid for February 28. Termination **after** the contract term was expressly sanctioned by the contract without liability for severance pay (R. 46).

The Court found that the notice given and the conduct of Sterling in closing the plant at midnight on February 27, 1963, did not constitute a termination of employment during the term of the Agreement, and that Sterling had not breached the contract in its refusal to pay seniority termination allowance to the plaintiffs (R. 113) (244 F. Supp. 84). This ruling was re-asserted in the District Court's subsequent opinion and judgment entered July 1, 1965 (R. 263-264; 243 F. Supp. 755).

Thereafter a second amended complaint was filed on January 30, 1965 (R. 121). Plaintiffs moved for a summary judgment against Sterling on Count I, asking in substance that Sterling be ordered to follow the contract "grievance procedure" and "commence to bargain" with plaintiffs over alleged contract violations which plaintiffs claimed had been made the subject of grievances.

Sterling and the Union each filed a motion to dismiss (R. 203, 220).

In its second and last opinion, the District Court

1. Held that the second amended complaint should be dismissed, without leave to amend, for gross disregard of Rule 8 (R. 234-5).

2. Reaffirmed its dismissal of Count III on the merits (R. 236, 264).

3. Held that plaintiffs were not entitled to an order directing either discussion or arbitration of any issue, because

a. The Union, as the record shows, was unwilling to press such grievances as were alleged in the various Court complaints (R. 247 ff.).

b. Sterling had not agreed to arbitration with anyone other than the Union (R. 250).

c. An order to engage in discussion would be fruitless (R. 251).

d. The controversy affects the entire unit and not merely individual employees (R. 252).

e. The individual employees involved had slept on whatever rights they had by failing to process the grievances (R. 255-6).

f. No grievance had even been taken to Step 1 (R. 258) and, on the facts of this case, considering also the judgment obtained by Sterling on the merits of Count III,

> "all the parties involved, the employer and the Union, as well as the employees, have repudiated, not merely waived, the arbitration and other grievance provisions . . ." (R. 257).*

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* The Record discloses that the Union and its officers, also parties defendant in this case, raised no objection to the submission on the merits of the issue under Count III and thus acquiesced in the waiver (or repudiation) by plaintiffs of arbitration of those issues. In paragraph 7 of the Union's Motion to Dismiss the Union averred that plaintiffs, by filing and submitting Count III, had made an election of remedies by basing their claim on the contract and asking a summary judgment thereon.

PROCEEDINGS IN THE COURT OF APPEALS.

The Court of Appeals:

1. Affirmed the District Court's dismissal of Count III (the claim for severance pay). While concurring in the reasoning of the District Court that the claim was without merit, the Court of Appeals took the view that dismissal of Count III was required by **Republic Steel v. Maddox**, 379 U. S. 650, 13 L. Ed. 2d 580, 84 S. Ct. 614 (1965), because no attempt had been made to assert the claim through the contractual grievance procedure, 365 F. 2d 448 at 451-53; reprinted in Petition, pp. 13-16.

2. Agreed with the District Court that the complaint could be dismissed under Rule 8 for failing to comply with the fundamental principles of good pleading, 365 F. 2d 448 at 454; reprinted in Petition, pp. 17-18.

3. Of the charge that the Union wrongfully abandoned the employees' claim, the Court of Appeals said:

> **The complaint uses language of hostile discrimination and similar wordage in characterizing the Union's activity when in fact there was no discrimination whatsoever as all employees were treated alike. Further, the broad and colorful language suggesting that the Union was inimical to its constituents was not supported by any allegation of bribery, preference or anything else that would be indicative of substance to plaintiffs' broad charges. We do not discuss these matters in more detail because their lack of substance makes them unimportant in the light of our opinion that all of the charges in the complaint fail to establish jurisdiction of the federal court over the issues here involved. . . .**

Moreover, in a footnote the Court of Appeals said (365 F. 2d 448, 455, footnote 8):

> Additionally, we have heretofore held that the Union alone has the right to negotiate broad policy issues such as re-negotiation of a new contract and relocation of a plant. The individuals have no vested interest in a company's operation being conducted at any certain location and Sterling had no duty to arbitrate this or any other issues that it had not agreed to arbitrate. See *Brown v. Sterling Alyminum Products, Inc.*, 365 F. 2d 651 (8th Cir. 1966).

4. Observed that under the contract Sterling had the right to move and held that **Republic Steel v. Maddox**, supra, was controlling because of the failure of the Union and of the employees to attempt use of the grievance procedure. The court said:

> . . . the (Contract) provision allowing Sterling to move its plant and terminate its employees resulted from negotiations during the course of a strike (in 1961) and was in fact the *ratio essendi* of the bargaining agreement. Neither the plaintiffs nor the Union ever sought to process any grievance on account of the plant's closing, employees' termination, or Sterling's refusal of jobs at other plants (365 F. 2d 448, 455).

and said further:

> we have only to look to the Woody affidavit to determine that the evidence before the District Court admittedly sufficed to conclusively show that plaintiffs have never attempted to process any unresolved grievance, even to Step 1 of the grievance procedure.

365 F. 2d 448 at 456; reprinted in Petition, p. 21.

5. Ruled that the doctrine of pendent jurisdiction would not permit the court to entertain Count I, because (a) there was no jurisdiction of Count III and (b) even if there had been, the two counts depend on different facts.

365 F. 2d 448 at 456; reprinted in Petition, pp. 21-22.

6. Held that the allegations of collusion and of the Union's failure to represent its members fairly were within the exclusive jurisdiction of the Labor Board.

365 F. 2d 448 at 456-57, reprinted in Petition, pp. 22-23.

As to Petitioners' No. 2 of "Questions Presented", it does not seem to involve Sterling for it refers only to "a claim for damages **against a Union** by its members for a breach of the Union's duty of fair representation" (Petition for Writ of Certiorari, p. 3, emphasis supplied).

Nevertheless, we point out that the Court of Appeals held that such charges "were not predicated upon the collective bargaining agreement so as to give the Court jurisdiction under Sect. 301 . . . were not contract oriented and not therefore, within the cognizance of federal and state courts" (365 F. 2nd 448, 456).

ARGUMENT.

I.

SECTION 301 GIVES THE DISTRICT COURT NO JURISDICTION TO ORDER THIS RESPONDENT TO "BARGAIN AND/OR ARBITRATE . . . REGARDING THE TERMINATION OF EMPLOYMENT AND THE RELOCATION OF THE PLANT"[1] BECAUSE NO CONTRACT VIOLATION IS ASSERTED AS THE BASIS FOR THE RELIEF SOUGHT.

The first, in order, of Petitioners' "Questions Presented" reads as follows:

> "1. Does this Court's mandate in Republic Steel v. Maddox, 85 S. Ct. 614 (1965), allow a unit of individual employees, who have been abandoned by their Union, to invoke the Grievance Procedure provisions of their labor agreement in order to bargain and/or arbitrate with their employer by and through their duly elected Chief Steward and Stewards, regarding the termination of their employment and the re-location of the manufacturing plant where they were employed?"[2]

This question presents no contract issue, but purely and simply the question whether Petitioners are entitled to an

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[1] Quoted from Petitioners' statement of "Questions Presented".

[2] Despite its verbosity, Count I of the Second Amended Complaint (R. 121) insofar as pertinent to the first of the questions on which the Petitioners seek to have certiorari granted, comes to nothing more than a claim that the company wrongfully refused to bargain over the shutdown and removal of the St. Charles plant. Thus at best Count I amounts to an allegation of unfair labor practices and not of contract violations. See Point III below.

order requiring the company to bargain, retroactively, over shutdown and removal of the St. Charles plant.

It is obvious that the District Court has no jurisdiction to entertain a suit for the relief sought here. We need only remember the following facts:

(a) *The right to close the plant was already bought and paid for.*

The only labor contract in the record was executed in 1961 in settlement of a protracted strike (R. 83). It remained in effect until February 28, 1963 (R. 63, 89-91). No provision of this contract required the company to bargain with the Union over shutdown or removal of the St. Charles plant. *On the contrary,* the contract expressly sanctioned the closing of the plant at the expiration of the contract term in these words:

> "It is expressly understood at the expiration of this two-year contract the Company shall have the right to close down permanently the St. Charles plant, to relocate permanently any department thereof or discontinue permanently any such department, without seniority termination pay" (R. 46).

One of the prime issues in the 1961 strike was the Union's demand for a severance pay clause (R. 83). The Contract which settled the strike provided severance pay ("Seniority termination allowance") for employees terminated during the period of the contract (R. 46). Correlative to a limited grant of severance pay rights, was the clause, quoted above, permitting the Company to close the St. Charles plant at the expiration of the contract, free of liability for severance pay. The quoted clause had been bargained for by the Company **two years before the closing of the plant.** Closing of the plant did not violate the contract,—it conformed to what the contract anticipated.

(b) *Petitioners are asking that the Company be ordered to negotiate a new contract, effective March 1, 1963.*

In the Statement portion of the Petition for Certiorari, plaintiffs say that in December 1962 the Union notified the Company that it wanted to negotiate a new labor agreement to take effect March 1, 1963, on expiration of the 1961 agreement, and sent to the Company "proposals intended to prevent the company from terminating the employment of these petitioners in the event of a shutdown and relocation of the St. Charles, Missouri, plant" (Petition, p. 4). The Company, states the petition, refused to bargain on any of these proposals.

Manifestly it was not a breach of the 1961 contract to refuse to bargain over contract proposals which would not take effect until **after** the 1961 contract had expired. Either party had the right to terminate the 1961 contract on February 28, 1963; in fact, notices were served by both the Union and the Company making that expiration date effective (R. 63, 89-91).

(c) *No request was made to the Company even to bargain over matters incidental to the closing.*

It is true that the Company declined to bargain over the Union's proposals for a *new* contract (R. 92-3). However, in the very same letter the Company said:

> "Nevertheless, the Company is ready to continue meeting with the representatives of your organization to discuss matters within the scope of the current contract which will terminate February 28, 1963" (R. 93-4).

No request for such discussion was ever made.

We confidently submit that the foregoing considerations make it impossible for the District Court to have juris-

diction under Section 301 of the part of this case represented by Petitioners' Question number 1.[3]

II.

EVEN ASSUMING (ARGUENDO) THAT THE PLANT CLOSING AND REMOVAL COULD BE THE SUBJECT OF A GRIEVANCE, NONE WAS EVER FILED. HAVING FAILED EVEN TO ATTEMPT CONTRACT PROCEDURES, PLAINTIFFS CANNOT INVOKE THE AID OF THE DISTRICT COURT.

In both the Second Amended Complaint (R. 121 ff.) and the Statement appearing in their Petition for Certiorari, Plaintiffs allude to the pendency of unsettled grievances. However, by checking the record references, it becomes apparent that no grievance was **ever** filed over the matter of plant closing and removal (R. 230; see also Woody

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[3] It is likely that the Court would have jurisdiction of Count III (claim for severance pay), assuming exhaustion of the grievance procedure. However, Petitioners are not seeking review of the dismissal below of Count III. Moreover, Count III was properly dismissed. The Court of Appeals said that the District Court had no jurisdiction of Count III because plaintiffs had not exhausted the grievance procedure. Further, it agreed with the District Court's finding **on the merits**, that plaintiffs were not entitled to any severance pay. The District Court thought itself warranted in tackling the merits, because the plaintiffs (by bringing suit), the Company (by moving for summary judgment on the merits of Count III) and the Union (by standing by as a party to the lawsuit) had not merely waived but actually repudiated arbitration. On the merits, the District Court ruled against the plaintiff's contention that they became entitled to severance pay because the Company, to guard against possible sabotage, closed the plant a day early but paid the employees as though they had worked through February 28, 1963; this did not amount to termination of the employees **during** the contract period, said both the District Court and the Court of Appeals. Thus plaintiffs have had a day in court on the severance pay question, and they had it at their own request **before** they gave any thought to requesting arbitration.

affidavit, R. 148 ff.). Accordingly, as both the District Court and the Court of Appeals have held, it follows from *Republic Steel Co. v. Maddox,* 379 U. S. 650, 13 L. Ed. 2d 580, 85 S. Ct. 611, that plaintiffs' excursion into federal court has been in vain.

Other miscellaneous grievances were filed prior to the plant closing . . . one on the last day (R. 191). However, we learn from the affidavit of plaintiff Woody, the chief shop steward, that not even these grievances were carried to the first stage . . . and he's frank enough to say, under oath, that he was the person who had the power and responsibility to move these grievances forward (See Woody's affidavit, R. 148 ff.).

The Court of Appeals found these facts fatal to plaintiffs' right to come into the District Court, saying:

> "Concerning ourselves first with all claims that can be construed to be breach of contract, we only have to look to the Woody affidavit to determine that the evidence before the District Court admittedly sufficed to conclusively show that plaintiffs have never attempted to process any unresolved grievance, even to Step 1 of the grievance procedure. Thus, plaintiffs had no standing in the federal court on their alleged claims for breaches of contract which normally might give rise to Sec. 301 jurisdiction. Therefore, *Maddox* is controlling of all alleged breach of contract claims."
>
> 365 F. 2d 448, 456, Petition, p. 21.

Furthermore, these miscellaneous grievances do not relate to plant removal and closing and, therefore, they have no relevance to the issue upon which a writ of certiorari is sought.

III.

IF THERE WAS A WRONGFUL REFUSAL TO BARGAIN OR UNLAWFUL COLLUSION BETWEEN THE COMPANY AND OFFICIALS OF THE UNION, THE MATTER IS ONE WITHIN THE EXCLUSIVE JURISDICTION OF THE NATIONAL LABOR RELATIONS BOARD.

Petitioners' Question No. 1 (for review on certiorari) is necessarily predicated on Count I of the Second Amended Petition, which asks for back pay and for an order requiring the Company

> "to commence to bargain in good faith with the Plaintiffs regarding . . . all of the reasons, terms and conditions which the Defendant, Sterling, can suggest to justify its decision intending to shut down its St. Charles plant;" (R. 137.)

Plaintiffs complain that the Company refused to bargain about closing the plant (R. 131) and that somehow the Company wrongfully colluded and conspired with officials of the Union to make it possible for the Company to move from St. Charles (R. 125 ff.). Clearly these allegations are charges of violations of the National Labor Relations Act. (Plaintiffs do in fact, without further explanation, cite that Act as an asserted source of the District Court's jurisdiction, R. 122).

If the case against the Company arises under the National Labor Relations Act, exclusive jurisdiction lies with the Labor Board and the District Court cannot entertain the case.

CONCLUSION.

This Brief is confined to the first question upon which a writ of certiorari is sought, since the second question relates exclusively to plaintiffs' claim against the Union and its officials.[1]

For the reasons stated herein, no Writ of Certiorari should be granted in respect to claims against Respondent Sterling Aluminum Products, Inc.

Respectfully submitted,

DANIEL BARTLETT,

WILLIAM STIX,
Attorneys for Respondent,
Sterling Aluminum Products, Inc.

Certificate of Service.

State of Missouri,
City of St. Louis.

I, Daniel Bartlett, one of the counsel and attorney of record for the Respondent, Sterling Aluminum Products, Inc., below, being duly sworn, says that on February 3, 1967 I served four copies of the foregoing Brief in Opposition to the Petition for Writ of Certiorari, as required by the Rules of the Supreme Court of the United States, (a) on the Petitioners by personally mailing such copies to Jerome J. Duff, Attorney for the Petitioners, at

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[1] For reasons already stated, we feel that there is no contract issue in this case and, accordingly that the Company could not properly be drawn into litigation of the fair representation issue, regardless of whether jurisdiction lies in the District Court or in the Labor Board.

his office in Suite 1155, 818 Olive Street, St. Louis, Mo. 63101, and (b) on the Respondent Labor Organizations and Officers by personally mailing such copies to Malcolm L. Bartley, Donald S. Siegel, William H. Bartley, and Bartley, Siegel & Bartley, their Attorneys, at 130 South Bemiston Ave., Clayton, Mo. 63105.

Daniel Bartlett,
Member of the United States
Supreme Court Bar.